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Attorneys for Plaintiffs and the Proposed Class

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

LINDA SANDERS and DOROTHY
MCQUEEN on behalf of themselves,
and all others similarly situated,

Plaintiffs,

v.

RBS CITIZENS, N.A.

Defendant.

Case No.: '13CV3136 JAH KSC

CLASS ACTION

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF
PURSUANT TO THE TELEPHONE
CONSUMER PROTECTION ACT,
47 U.S.C. §§ 227 *et seq.***

DEMAND FOR JURY TRIAL

INTRODUCTION

1. Linda Sanders and Dorothy McQueen (“Plaintiffs”) bring this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of RBS Citizens, N.A. (“Defendant”), in negligently, and/or willfully contacting Plaintiffs through telephone calls on Plaintiffs’ cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. §§ 227 *et seq.*, (“TCPA”), thereby invading Plaintiffs’ privacy. Plaintiffs allege as follows upon personal knowledge as to their own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by their attorneys.

JURISDICTION AND VENUE

2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiffs seek up to \$1,500 in damages for each call in violation of the TCPA, which, when aggregated among a proposed class number in the tens of thousands, exceeds the \$5,000,000 threshold for federal court jurisdiction. Further, Plaintiffs allege a national class, which will result in at least one class member belonging to different states than that of the Defendant, providing jurisdiction under 28 U.S.C. § 1332(d)(2)(A). Therefore, both elements of diversity jurisdiction under the Class Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

3. This Court has federal question subject matter jurisdiction under 28 U.S.C. § 1331, as the action arises under the TCPA, a federal statute.

4. Venue is proper in the United States District Court for the Southern District of California pursuant to 28 U.S.C. § 1391(b) because Defendant, at all times herein mentioned, is duly authorized and in good standing to conduct business in California and does business within this judicial district.

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PARTIES

5. Plaintiff Linda Sanders is, and at all times mentioned herein was, a resident of the State of California. She is, and at all times mentioned herein was a “person” as defined by 47 U.S.C. § 153 (32).

6. Plaintiff Dorothy McQueen is, and at all times mentioned herein was, a resident of the State of Michigan. She is, and at all times mentioned herein was a “person” as defined by 47 U.S.C. § 153 (32).

7. Defendant RBS Citizens, N.A, a national bank that is wholly-owned by RBS Citizens Financial Group, Inc., is a Rhode Island corporation that provides financing for the purchase of automobiles, among other services. RBS Citizens, N.A is a corporation that maintains its principal place of business at One Citizens Plaza Providence, RI 02903. RBS Citizens, N.A. is hereinafter referred to as “Citizens.”

8. Plaintiffs allege that at all times relevant herein Defendant, a national association, which is duly authorized and in good standing to conduct business in California and does business within this judicial district by engaging in the business of providing commercial banking services including credit card products.

THE TELEPHONE CONSUMER PROTECTION ACT OF 1991
(TCPA), 47 U.S.C. §§ 227 *et seq.*

9. In 1991, Congress enacted the Telephone Consumer Protection Act, 47 U.S.C. § 227 (TCPA),¹ in response to a growing number of consumer complaints regarding certain telemarketing practices.

10. The TCPA regulates, among other things, the use of automated telephone equipment, or “autodialers.” Specifically, the plain language of section 227(b)(1)(A)(iii) prohibits the use of autodialers to make any call to a wireless

¹ Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), codified at 47 U.S.C. § 227 (TCPA). The TCPA amended Title II of the Communications Act of 1934, 47 U.S.C. §§ 201 *et seq.*

1 number in the absence of an emergency or the prior express consent of the called
2 party.²

3 11. According to findings by the Federal Communication Commission
4 (“FCC”), the agency Congress vested with authority to issue regulations
5 implementing the TCPA, such calls are prohibited because, as Congress found,
6 automated or prerecorded telephone calls are a greater nuisance and invasion of
7 privacy than live solicitation calls, and such calls can be costly and inconvenient.
8 The FCC also recognized that wireless customers are charged for incoming calls
9 whether they pay in advance or after the minutes are used.³

10 **FACTUAL ALLEGATIONS**

11 *Factual Allegations Relating to Plaintiff Linda Sanders*

12 12. Commencing approximately at least as early as 2010, Plaintiff Sanders
13 received a number of unsolicited phone calls to her wireless phone, for which
14 Plaintiff provided no consent to call. These calls were received several times per
15 week.

16 13. All phone calls received by Plaintiff Sanders were made by an artificial
17 or prerecorded voice.

18 14. These unsolicited phone calls placed to Plaintiff’s wireless telephone
19 were placed via an “automatic telephone dialing system,” (“ATDS”) as defined by
20 47 U.S.C. § 227 (a)(1) and by using “an artificial or prerecorded voice” system as
21 prohibited by 47 U.S.C. § 227 (b)(1)(A), which had the capacity to produce or store
22 numbers randomly or sequentially, and to dial such numbers, to place telephone calls
23 to Plaintiff’s cellular telephone.

24
25
26 ² 47 U.S.C. § 227(b)(1)(A)(iii).

27 ³ *Rules and Regulations Implementing the Telephone Consumer Protection Act of*
28 *1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003).

1 15. The telephone number that Defendant, or its agents, called was assigned
2 to a cellular telephone service for which Plaintiff incurred a charge for incoming
3 calls pursuant to 47 U.S.C. § 227 (b)(1).

4 16. These telephone calls constitute calls that were not for emergency
5 purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

6 17. Plaintiff did not provide Defendant or its agents prior express consent
7 to receive unsolicited phone calls pursuant to 47 U.S.C. § 227 (b)(1)(A).

8 18. These telephone calls by Defendant or its agents therefore violated 47
9 U.S.C. § 227(b)(1).

10 19. Under the TCPA and pursuant to the FCC's January 2008 Declaratory
11 Ruling, the burden is on Defendant to demonstrate that Plaintiff provided express
12 consent within the meaning of the statute.

13 ***Factual Allegations Relating to Plaintiff Dorothy McQueen***

14 20. Commencing approximately at least as early as 2012, Plaintiff
15 McQueen received a number of unsolicited phone calls to her wireless phone, for
16 which Plaintiff provided no consent to call. These calls were received approximately
17 once per month.

18 21. Most phone calls Plaintiff McQueen received featured a pre-recorded
19 and/or artificial voice; however, during the times when Plaintiff McQueen received
20 a live representative of Defendant on the line, Plaintiff specifically instructed
21 Defendant to no longer contact her on her cellular telephone, thereby revoking any
22 consent Defendant claimed it may have had to make such calls. However, Defendant
23 ignored that request and continued to call her on her cell phone.

24 22. These unsolicited phone calls placed to Plaintiff's wireless telephone
25 were placed via an "automatic telephone dialing system," ("ATDS") as defined by
26 47 U.S.C. § 227 (a)(1) and by using "an artificial or prerecorded voice" system as
27 prohibited by 47 U.S.C. § 227 (b)(1)(A), which had the capacity to produce or store
28

1 numbers randomly or sequentially, and to dial such numbers, to place telephone calls
2 to Plaintiff's cellular telephone.

3 23. The telephone number that Defendant, or its agents, called was assigned
4 to a cellular telephone service for which Plaintiff incurred a charge for incoming
5 calls pursuant to 47 U.S.C. § 227 (b)(1).

6 24. These telephone calls constitute calls that were not for emergency
7 purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

8 25. Plaintiff did not provide Defendant or its agents prior express consent
9 to receive unsolicited phone calls pursuant to 47 U.S.C. § 227 (b)(1)(A).

10 26. These telephone calls by Defendant or its agents therefore violated 47
11 U.S.C. § 227(b)(1).

12 27. Under the TCPA and pursuant to the FCC's January 2008 Declaratory
13 Ruling, the burden is on Defendant to demonstrate that Plaintiff provided express
14 consent within the meaning of the statute.

15 **CLASS ACTION ALLEGATIONS**

16 28. Plaintiffs bring this action on behalf of themselves and on behalf of and
17 all others similarly situated ("the Class").

18 29. Plaintiffs represent, and are members of the Class, consisting of all
19 persons within the United States who received any unsolicited telephone calls from
20 Defendant or its agents on their paging service, cellular phone service, mobile radio
21 service, radio common carrier service, or other service for which they were charged
22 for the call, through the use of any automatic telephone dialing system or artificial
23 or prerecorded voice as set forth in 47 U.S.C. § 227(b)(1)(A)(3), which telephone
24 calls by Defendant or its agents were not made for emergency purposes or with the
25 recipients' prior express consent, within four years prior to the filing of this
26 Complaint.

1 30. Defendant and its employees or agents are excluded from the Class.
2 Plaintiffs do not know the number of members in the Class, but believes the Class
3 members number in the hundreds of thousands, if not more. Thus, this matter should
4 be certified as a Class action to assist in the expeditious litigation of this matter.

5 31. Plaintiffs and members of the Class were harmed by the acts of
6 Defendant in at least the following ways: Defendant, either directly or through its
7 agents, illegally contacted Plaintiffs and the Class members via their cellular
8 telephones by using unsolicited telephone calls, thereby causing Plaintiffs and the
9 Class members to incur certain cellular telephone charges or reduce cellular
10 telephone time for which Plaintiffs and the Class members previously paid, and
11 invading the privacy of said Plaintiffs and the Class members. Plaintiffs and the
12 Class members were damaged thereby.

13 32. This suit seeks only damages and injunctive relief for recovery of
14 economic injury on behalf of the Class and it expressly is not intended to request
15 any recovery for personal injury and claims related thereto. Plaintiffs reserve the
16 right to expand the Class definition to seek recovery on behalf of additional persons
17 as warranted as facts are learned in further investigation and discovery.

18 33. The joinder of the Class members is impractical and the disposition of
19 their claims in the Class action will provide substantial benefits both to the parties
20 and to the Court. The Class can be identified through Defendant's records or
21 Defendant's agents' records.

22 34. There is a well-defined community of interest in the questions of law
23 and fact involved affecting the parties to be represented. The questions of law and
24 fact to the Class predominate over questions which may affect individual Class
25 members, including the following:

- 26 a. Whether, within the four years prior to the filing of this Complaint,
27 Defendant or its agents placed telephone calls without the recipients'
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1 prior express consent (other than a telephone call made for
2 emergency purposes or made with the prior express consent of the
3 called party) to a Class member using any automatic telephone dialing
4 system or an artificial or pre-recorded voice system, to any telephone
5 number assigned to a cellular telephone service;

6 b. Whether Plaintiffs and the Class members were damaged thereby, and
7 the extent of damages for such violation; and

8 c. Whether Defendant and its agents should be enjoined from engaging
9 in such conduct in the future.

10 35. As persons that received at least one unsolicited telephone call to their
11 cell phone without their prior express contest, Plaintiffs are asserting claims that are
12 typical of the Class. Plaintiffs will fairly and adequately represent and protect the
13 interests of the Class in that Plaintiffs have no interest antagonistic to any member
14 of the Class.

15 36. Plaintiffs and the members of the Class have all suffered irreparable
16 harm as a result of the Defendant's unlawful and wrongful conduct. Absent a class
17 action, the Class will continue to face the potential for irreparable harm. In addition,
18 these violations of law will be allowed to proceed without remedy and Defendant
19 will likely continue such illegal conduct. Because of the size of the individual Class
20 member's claims, few, if any, Class members could afford to individually seek legal
21 redress for the wrongs complained of herein.

22 37. Plaintiffs have retained counsel experienced in handling class action
23 claims and claims involving violations of the Telephone Consumer Protection Act.

24 38. A class action is a superior method for the fair and efficient adjudication
25 of this controversy. Class-wide damages are essential to induce Defendant to
26 comply with federal law. The interest of Class members in individually controlling
27 the prosecution of separate claims against Defendant is small because the maximum
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1 statutory damages in an individual action for violation of privacy are minimal.
2 Management of these claims is likely to present significantly fewer difficulties than
3 those presented in many class claims.

4 39. Defendant has acted on grounds generally applicable to the Class,
5 thereby making appropriate final injunctive relief and corresponding declaratory
6 relief with respect to the Class as a whole.

7 **FIRST CAUSE OF ACTION**

8 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**

9 **47 U.S.C. §§ 227 *ET SEQ.***

10 40. Plaintiffs incorporate by reference all of the above paragraphs of this
11 Complaint as though fully stated herein.

12 41. Defendant and/or its agents made unsolicited telephone calls to wireless
13 phone numbers belonging to Plaintiffs and the Class without their prior express
14 consent.

15 42. Defendant and/or its agents utilized artificial or prerecorded voice
16 messages in making telephone calls to Plaintiffs and the Class.

17 43. Each such telephone call was made using equipment that, upon
18 information and belief, had the capacity to store or produce telephone numbers to be
19 called, using a random or sequential number generator, and to dial such numbers.
20 By using such equipment, Defendant was able to effectively make thousands of
21 phone calls simultaneously to lists of thousands of wireless phone numbers of
22 consumers without human intervention. These telephone calls were made without
23 the prior express consent of the Plaintiffs and other members of the Class to receive
24 such telephone calls.

25 44. The foregoing acts and omissions of Defendant and its agents constitute
26 numerous and multiple negligent violations of the TCPA, including but not limited
27 to each and every one of the above-cited provisions of 47 U.S.C. § 227 *et seq.*
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1 45. As a result of Defendant's, and Defendant's agents', negligent
2 violations of 47 U.S.C. § 227 *et seq.*, Plaintiffs and the Class are entitled to an award
3 of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C.
4 § 227(b)(3)(B).

5 46. Plaintiffs and the Class are also entitled to and seek injunctive relief
6 prohibiting such conduct in the future.

7 **SECOND CAUSE OF ACTION**
8 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE**
9 **TELEPHONE CONSUMER PROTECTION ACT**
10 **47 U.S.C. §§ 227 *ET SEQ.***

11 47. Plaintiffs incorporate by reference the above paragraphs 1 through 39
12 inclusive, of this Complaint as though fully stated herein.

13 48. Defendant and/or its agents made unsolicited telephone calls to wireless
14 phone numbers belonging to Plaintiffs and the Class without their prior express
15 consent.

16 49. Defendant and/or its agents utilized artificial or prerecorded voice
17 messages in making telephone calls to Plaintiffs and the Class.

18 50. Each such telephone class was made using equipment that, upon
19 information and belief, had the capacity to store or produce telephone numbers to be
20 called, using a random or sequential number generator, and to dial such numbers.
21 By using such equipment, Defendant was able to effectively make thousands of
22 phone calls simultaneously to lists of thousands of wireless phone numbers of
23 consumers without human intervention. These telephone calls were made without
24 the prior express consent of the Plaintiffs and other members of the Class to receive
25 such telephone calls.

26 51. The foregoing acts and omissions of Defendant constitute numerous
27 and multiple knowing and/or willful violations of the TCPA, including but not
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1 limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 *et*
2 *seq.*

3 52. As a result of Defendant's knowing and/or willful violations of 47
4 U.S.C. § 227 *et seq.*, Plaintiffs and the Class are entitled to treble damages, as
5 provided by statute, up to \$1,500.00, for each and every violation, pursuant to 47
6 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

7 53. Plaintiffs and the Class are also entitled to and seek injunctive relief
8 prohibiting such conduct in the future.

9 **PRAYER FOR RELIEF**

10 **Wherefore**, Plaintiffs respectfully request the Court to grant Plaintiffs and the Class
11 members the following relief against Defendant:

12 **FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF**
13 **THE TCPA, 47 U.S.C. §§ 227 *ET SEQ.***

14 54. As a result of Defendant's, and Defendant's agents', negligent
15 violations of 47 U.S.C. § 227(b)(1), Plaintiffs seek for themselves and each Class
16 member \$500.00 in statutory damages, for each and every violation, pursuant to 47
17 U.S.C. § 227(b)(3)(B).

18 55. Pursuant to 47 U.S.C. § 227(b)(3)(A), Plaintiffs seek injunctive relief
19 prohibiting such conduct in the future.

20 56. Any other relief the Court may deem just and proper.

21 **SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL**
22 **VIOLATION OF THE TCPA, 47 U.S.C. §§ 227 *ET SEQ.***

23 57. As a result of Defendant's, and Defendant's agents', willful and/or
24 knowing violations of 47 U.S.C. § 227(b)(1), Plaintiffs seek for themselves and each
25 Class member treble damages, as provided by statute, up to \$1,500.00 for each and
26 every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

59. Any other relief the Court may deem just and proper.

59. Any other relief the Court may deem just and proper.

JURY DEMAND

Plaintiffs hereby demands a trial by jury on all issues so triable.

Dated: December 20, 2013 /s/ Ronald A. Marron

By: Ronald A. Marron

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